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Before the
UNITED STATES
COPYRIGHT ROYALTY JUDGES
LIBRARY OF CONGRESS
Washington, D.C.

In the Matter of: DETERMINATION OF RATES AND TERMS FOR MAKING AND DISTRIBUTING PHONORECORDS (PHONORECORDS III)	Docket No. 16–CRB–0003–PR (2018–2022)

MOTION OF COPYRIGHT OWNERS TO ADOPT
INTERIM RATES AND TERMS PENDING THE REMAND DETERMINATION

The National Music Publishers' Association, Inc. ("NMPA") and Nashville Songwriters Association International ("NSAI" and, together with the NMPA, the "Copyright Owners") hereby submit this motion to the Copyright Royalty Judges (the "Judges" or, collectively, the "Board") to set interim rates and terms that explicitly maintain the current rates and terms, that were determined by the Board and set forth in Part 385, as detailed in the attached Proposed Order (the "Interim Rates"). The Interim Rates would remain in effect until the Judges publish a new final determination in this proceeding (the "Remand Determination") in resolution of the remand directed in the August 7, 2020 decision (the "Decision") by the United States Court of Appeals for the District of Columbia Circuit (the "D.C. Circuit"). The Decision did not address what rates and terms should be operative on an interim basis pending the Remand Determination.

As the Remand Determination will be retroactive across the rate period, whatever rates are in effect pending that determination will necessarily be interim rates. The question then is not whether there will be interim rates, but whether the interim rates will be reasonable interim rates that are consistent with the Decision and the evidence supporting the original determination by the Board. As discussed herein, it is essential and appropriate that the Judges explicitly set the Interim

Rates, to prevent significant market disruption, transaction costs and potential irreparable harm to copyright owners.

The Judges have the authority to set the Interim Rates. As laid out below in detail, the Judges have broad procedural freedom on remand, and agencies routinely set interim rates to protect against market disruption. Here, the proposed Interim Rates are appropriately set at rates that the Board has already determined to be reasonable, a finding that was not rejected by the D.C. Circuit. These rates are indisputably not disruptive to services (as the thriving streaming service industry during nearly three years of such rates confirms), and are consistent with the narrow issues to be addressed by the Judges on remand. The text of Section 803 of the Copyright Act further confirms that the current rates, as the most recently determined rates, are the appropriate interim rates pending the Remand Determination.

The Interim Rates are needed to avoid significant confusion and disruption in the mechanical licensing market, and harm to copyright owners during the period pending the Remand Determination. While Section 803 appears to provide that the most recently determined rates and terms—*i.e.*, the current rates and terms—should remain in effect until they are replaced with new rates and terms, the partial remand leaves the door open for services to unilaterally pursue alternative and unreasonable interpretations that sharply reduce rates and terms, leaving the current marketplace without reasonable interim rates and with widespread uncertainty about royalties. Overturning the current rates during the interim period would trigger a landslide of transaction costs and would jeopardize the livelihoods and economic well-being of songwriters and copyright owners in the midst of a pandemic. Then, the Remand Determination would likely trigger another landslide of transaction costs to alter the changes that occurred during the interim period. This

would create almost the worst of all possible scenarios for short-term disruption causing irreparable harm to songwriters and copyright owners already in precarious financial positions.[1]

Such a potential outcome would also obstruct the statutory duties of the Mechanical Licensing Collective (the "MLC"), which is required by federal law to collect monthly royalties from services at the rates and terms set by the Judges, beginning in January 2021. The MLC needs clear guidance to carry out its statutory mandate during the interim period.

In contrast, maintaining the current rates will not cause disruption to the services, which have successfully operated with nearly three years of the current rates. Because the Remand Determination will be retroactive, the critical issue in the interim is the short-term disruption which can have irreparable effects. Maintaining the current rates pending the Remand Determination will, almost by definition, minimize these effects, and it is the *only* path that offers the possibility of avoiding *any* disruptive effects.

For all of these reasons, the Copyright Owners respectfully request that the Judges grant this motion and explicitly provide for the maintenance of the current rates and terms pending the Remand Determination.

ARGUMENT

I. The Judges have authority to implement the Interim Rates

All rates and terms applied pending remand will be interim, as the rates and terms in the Remand Determination, whether different or the same, will apply across the rate period. The Judges have the authority to set the reasonable, interim rates.

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[1] The transaction cost burden also falls disproportionately on copyright owners. For each single payment that is adjusted between a service and a music publisher, the music publisher will then have to adjust payments to many, sometimes tens of thousands, of songwriters to whom the music publisher accounts. The damage from these tremendous costs is effectively irreparable, since there is no provision in the royalty rates and terms to compensate for this damage.

A. The Judges have inherent authority to set interim rates

A ratesetting agency such as the Board has the inherent authority to impose interim rates, provided that Congress has not set forth a "definitive contrary legislative command" and the agency's "approach is a reasonable one." *United States v. City of Fulton*, 475 U.S. 657, 666 (1986); *see also BP West Coast Prods., LLC v. FERC*, 374 F.3d 1263, 1305 (D.C. Cir. 2004). In *City of Fulton*, the Supreme Court rejected an argument that "[a] rate increase . . . can become effective only after the entire administrative review process has been completed" and affirmed an interim rate order where the authorizing statute "[did] not definitively speak to the question of interim rates" and where "[i]nterim ratesetting appear[ed] well suited to accommodating" the agency's statutory goals. *Id*.; *see also Central Elect. Power Co-op., Inc. v. Southeastern Power Admin.*, 338 F.3d 333, 338 (4th Cir. 2003) (emphasizing the *City of Fulton* holding that FERC has interim rate-setting authority and that such authority was advisable to "eliminate the possibility of 'the Government constantly . . . playing catchup in its attempt to secure an appropriate rate'").

The Court in *City of Fulton* emphasized that it "repeatedly has given regulatory agencies [the authority] to issue interim rate orders prior to final determinations whether proposed rates meet statutory requirements." 475 U.S. at 670. Among those earlier decisions by the Supreme Court were *In re Trans Alaska Pipeline Rate Cases* and *Fed. Power Comm'n v. Tennessee Gas Transmission Co.*, decisions that firmly established ratesetting agencies' inherent authority to institute interim rates absent express Congressional prohibition. In *Trans Alaska*, the Court affirmed an order by the Interstate Commerce Commission that had put in place maximum interim rates during a period wherein tariff schedules were suspended, finding that the agency's interim rate order, while not expressly authorized by statute, was "an intelligent and practical exercise of [the ICC's statutory] suspension power which is thoroughly in accord with Congress' goal . . . to strike a fair balance between the needs of the public and the needs of regulated carriers." 436 U.S.

631, 654 (1978). In *Tennessee Gas Transmission Co.*, the Court approved of the Federal Power Commission's issuance of an interim order that it held was "in keeping with the purposes of the [statute] to protect consumers against exploitation at the hands of natural gas companies and to underwrite just and reasonable rates to the consumers of natural gas." 371 U.S. 145, 154 (1962) (citations and quotations omitted).

Following the Supreme Court, circuit and district courts have repeatedly reaffirmed rate-setting agencies' inherent powers to set interim rates pending a full and final determination. *See e.g.*, *Central Elect. Power Co-op., Inc.*, 338 F.3d at 338 (relying on *City of Fulton* to uphold rates related to recovery of revenue shortages where "the Flood Control Act contain[ed] no . . . provisions" prohibiting such rates); *BP West Coast Prods., LLC*, 374 F.3d at 1305 (affirming interim rate not prohibited by statute); *Colorado River Energy Distribs. Ass'n v. Lewis*, 516 F. Supp. 926, 930 (D.D.C. 1981) (affirming agency interim rates and explaining, "[e]xplicit statutory authority to set interim rates is not required. The Supreme Court has found the power to allow interim rates to become effective, subject to refunds, to be implicit in a general provision authorizing an agency to issue rate orders.") (citations omitted).

Indeed, this power to impose interim rates is one that other agencies have exercised often in ratesetting contexts. *See e.g.*, *City of Fulton*, 475 U.S. at 661-63 (affirming the Secretary of Energy's interim rate-approval policies and further noting three prior interim rates in which the agency had approved significant rate increases for a one-year period prior to commencement of hearings); *Sorenson Commc's, Inc. v. FCC*, 659 F.3d 1035, 1040-41 (10th Cir. 2011) (describing FCC's interim rate for video relay services imposed while the agency considered reforming video relay service compensation); *Qwest Corp. v. Koppendrayer*, 436 F.3d 859, 865-66 (8th Cir. 2006) (affirming state public utilities commission's interim rate and discussing the FCC's use of interim

rates); *Am. Broad. Cos. v. FCC*, 682 F.2d 25, 27 n.2 (2d Cir. 1982) (describing FCC's interim rate increase for telecommunications carrier rates during the pendency of "lengthy rate increase proceedings"); *see also*, *e.g.*, Order of Chief Judge Granting Motion for Interim Implementation of Settlement Rates, 172 FERC ¶ 63,022 (Aug. 28, 2020); Order of Chief Judge Granting Motion for Interim Implementation of Settlement Rates, 172 FERC ¶ 63,018 (Aug. 18, 2020).

Here, the Board has already found the Interim Rates to be reasonable based on the evidence submitted in the extensive proceeding. While the Decision remanded aspects of the Board's Determination, it did so on procedural grounds, asking for additional explanation from the Board or additional opportunity for participants to submit evidence; it did not hold any substantive aspects of the Board's rates and terms to be unreasonable. Therefore, far *more* than in the foregoing cases where interim rates were set and affirmed, the Interim Rates are already supported by substantial evidence in the record and are appropriately set as interim rates by the Judges.

B. The Copyright Act affords the Judges broad procedural freedom in remand proceedings

Nothing in the Copyright Act (the "Act") or the Decision precludes the Judges from setting the appropriate interim rates in this context. Rather, the Act charges the Judges with the obligation and attendant power "[t]o make determinations and adjustments of reasonable terms and rates of royalty payments." 17 U.S.C. § 801(b)(1). The Act further does not delineate the procedures the Judges must apply on remand following an appeal. Indeed, the D.C. Circuit has held that the Act provides the Judges with broad procedural freedom in remand proceedings and that the Judges' own related regulatory provision, 37 C.F.R. § 351.15, is deliberately open-ended so as to "permit the Judges, and the parties, to address the particulars of each remand":

> First, neither the Copyright Act nor the Board's regulations prescribe any particular procedures on remand. *See* 17 U.S.C. § 803(a), (d)(3). The relevant regulation provides only that, "[i]n the event of a remand . . . , the parties to the proceeding shall . . . file with the Judges written proposals for the conduct and schedule of the

> resolution of the remand." 37 C.F.R. § 351.15. At the time of its adoption, the Board described that regulation as "purposely flexible to permit the Judges, and the parties, to address the particulars of each remand before the Judges in an effort to promote administrative efficiency and reduce costs."

Intercollegiate Broad. Sys., Inc., v. Copyright Royalty Bd., 796 F.3d 111, 125-26 (D.C. Cir. 2015) (citation omitted); *cf. Oceana, Inc. v. Ross*, 321 F. Supp. 3d 128, 136 (D.D.C. 2018) (explaining that when remanding to an agency, a court generally "may not dictate to the agency the methods, procedures, or time dimension, for its reconsideration") (quotations and citation omitted); *Bean Dredging, LLC v. United States*, 773 F. Supp. 2d 63, 78 (D.D.C. 2011) (describing a "general preference to leave to the agency's discretion to decide how, in light of internal organizational considerations, it may best proceed upon remand").

The statutory provision governing the Judges' procedures, Section 803, contains no contrary command that impedes the Judges from adopting the Interim Rates, but rather is in accord with such a decision. Section 803(d)(3) provides that the circuit court may remand "for further proceedings in accordance with subsection (a)." Subsection (a) requires that the Judges act consistently with the Act and regulations the Judges and the Librarian of Congress have issued; and "on the basis of a written record" and upon binding orders, authority and precedent. The Board previously took note of the lack of binding procedures concerning CRB remand proceedings when implementing its own "purposely flexible" regulation governing such proceedings. *See* 74 Fed. Reg. 38,532, 38,532 (Aug. 4, 2009) (contrasting the new, flexible remand procedures with the "significant[ly] detail[ed]" procedural structure in Section 803 for proceedings to establish royalty rates and terms in the first instance). Under *City of Fulton*, the Board has thus interpreted, and may appropriately continue to interpret, Congress' decision to "declin[e] to set out a detailed mandatory procedural scheme [as] intended to leave the agency substantial discretion as to how to structure its review." *Fulton*, 475 U.S. at 670; *see also id.* at 661 (upholding interim rates and

noting that "[b]ecause the Flood Control Act imposed no particular procedures for Commission review of rate proposals, the Commission was largely free to design its own.").

Section 803(d)(2) further supports the Interim Rates, providing:

> . . . In other cases where rates and terms do not expire on a specified date, successor rates and terms shall take effect on the first day of the second month that begins after the publication of the determination of the Copyright Royalty Judges in the Federal Register, except as otherwise provided in this title, or by the Copyright Royalty Judges, or as agreed by the participants in a proceeding that would be bound by the rates and terms. **Except as otherwise provided in this title, the rates and terms, to the extent applicable, shall remain in effect until such successor rates and terms become effective.** (Emphasis added.)

17 U.S.C. § 803(d)(2)(B). In this case, the rates and terms in the Final Determination dated November 5, 2018 (the "Final Determination") "took effect" and "became effective" as the successor rates and terms to the Phonorecords II rates and terms on the first day of the second month after those rates and terms were published in the Federal Register (and they have been in effect for a period of nearly three years). This subsection thus indicates that these rates should be maintained until successor rates and terms become effective.[2] Remand does not change that the Final Determination's rates are the most current rates and terms, and should remain in effect unless and until succeeded by other rates and terms that have been determined to be reasonable for this rate period. An order maintaining the Interim Rates pending the Remand Determination is thus supported by the Act, is certainly not contrary to any definitive legislative command, and is thus proper as well as urgently needed by songwriters and other copyright owners (and is not prejudicial

[2] Congress' stated preference for using the most recently determined rates and terms as interim rates pending review finds further support in Section 803(c)(2)(E)(i), which provides that pending rehearing in proceedings where rates expire, the rates in the initial determination shall be used as interim rates until the decision on the rehearing motion is rendered (subject to retroactive correction upon final rehearing determination).

to the rights or interests of the services, which, as noted, have indisputably flourished under these rates and terms for a period of nearly three years).

II. The Interim Rates are the appropriate rates pending remand

A. The Interim Rates are needed to avoid disruption and financial harm to copyright owners

As noted above, there will necessarily be interim rates pending the Remand Determination. The question is whether there will be reasonable interim rates that the Board sets, supported by substantial evidence, that the MLC can rely on to discharge its statutory mandate, and that will not disrupt the industry or cause irreparable harm to songwriters and music publishers, or whether there will be a free-for-all as services select rates unilaterally in the absence of an interim rate fixed by the Judges. Section 803, the Section 801 factors, the reasoning in the Final Determination, and years of market experience under the current rates, all strongly support maintaining the current rates in the interim. The balance of equities is not close. Retroactivity of the Remand Determination, reversing sharply reduced rates and terms, will not prevent the disruption and harm from the landslides of adjustments that would be triggered by overturning the current rates in the interim period. In contrast, the nearly three years of the current rates confirms that the streaming services, instead of being disrupted, are thriving under these rates and should continue to do so through the interim period.

As the Board found in its 801(b)(1)(a) analysis, mechanical royalties are fundamental to songwriters' ability to make ends meet – "to cover living expenses," as one witness testified. 84 Fed. Reg. 1,918, 1,957 (Feb. 5, 2019). The Board further concluded that the "existing rates for mechanical royalties from interactive streaming," meaning the Phonorecords II rates, were "a contributing factor in the decline in songwriter income, and that this decline has led to fewer songwriters. If this trend continues, the availability of quality songs will inevitably decrease." *Id.*

at 1,957. The D.C. Circuit affirmed the Board's findings on this factor. *See* Decision at 46-49.[3] The inability of songwriters to put food on the table and the loss of songwriters from the profession are not harms that can be corrected retroactively.

There is a particularly severe risk attendant to lowering payments in the middle of the current pandemic, when many music industry revenue streams have been significantly or entirely lost. Reducing the royalties that the Board determined to be reasonable for the current time period (and which the Decision did not hold to be unreasonable) would be disruptive enough, and could strike at the financial foundation of countless families and businesses. Worse yet, leaving room for services to "claw back" three years of royalty increases using unilateral determinations of rates based on perceived ambiguity as to the effective rates, could deepen the harm.[4] Such disruption clearly constitutes sufficient grounds for setting the Interim Rates. *See Competitive Telecommunications Ass'n v. F.C.C.*, 309 F.3d 8, 14 (D.C. Cir. 2002) ("Avoidance of market disruption pending broader reforms is, of course, a standard and accepted justification for a temporary rule."). The thriving services market, which includes some of the largest companies in the world, faces no similar risk from maintaining the Interim Rates.

The importance of setting the Interim Rates also bears on the new statutory mechanical licensing collective (the "MLC"). The MLC is tasked with administering the new blanket license. On January 1, 2021, the blanket license replaces the former compulsory licensing system for

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[3] Page number citations refer to the publicly filed version of the Decision (Doc. # 1856124).

[4] Nor is such conduct unlikely, as shown by the example of Spotify in 2019, which clawed back a year of increased royalties immediately upon issuance of the Final Determination in this proceeding. Spotify claimed family and student plan discounts so massive that they offset the increased rates and significantly decreased Spotify's total royalties for 2018. Since Spotify had paid at the *Phonorecords II* rates pending publication of the Final Determination in 2019, which was retroactive for 2018, Spotify immediately clawed back a full year of alleged overpayments. *See, e.g.*, Tim Ingham, *Spotify: We 'overpaid' songwriters and their publishers in 2018, and we would like our money back*, MUSIC BUSINESS WORLDWIDE, June 21, 2019, https://www.musicbusinessworldwide.com/spotify-we-overpaid-songwriters-and-publishers-in-2018-and-now-we-would-like-our-money-back/.

mechanical rights in the digital space. Beginning with January 2021 usage, federal law requires the MLC to collect all royalties due from services operating under the blanket license. The MLC must collect these mechanical royalties every month, and then match and pay out the appropriate shares to copyright owners on a monthly basis as well. 17 U.S.C. 115(d)(3)(G), (d)(4). Critically, the royalties that the MLC is required to collect from services and pay out to copyright owners each month must be calculated using the rates and terms set by the Judges. 17 U.S.C. 115(c)(1)(F). Unless the Remand Determination is to issue before February 2021, the MLC requires interim rates in order to carry out its mandate under federal law.

Importantly, when addressing exigencies, an agency's decision to act on an interim basis, and the interim fixes it puts in place to maintain the status quo or otherwise address the exigency, are afforded particular deference by the courts. As the D.C. Circuit has recently explained,

> We owe particular deference to interim regulatory programs involving some exigency, like the one at issue here. . . . To that end, this court has been reluctant to interfere with an agency decision to freeze aspects of a preexisting regime for an interim period until a new program can be fully phased in . . . . Such interim measures must be accorded "[s]ubstantial deference" to permit the agency "to maintain the status quo so that the objectives of a pending rulemaking proceeding will not be frustrated."

AT&T, Inc. v. FCC, 886 F.3d 1236, 1246 (D.C. Cir. 2018) (citations omitted).

B. The Interim Rates are appropriate given the findings in the Final Determination affirmed by the D.C. Circuit and the lack of service disruption under those rates

The disruption and harm described above can be avoided by maintaining the current rates during the interim period. As noted above, the remand is very narrow. The Decision remanded to address three procedural issues. *First*, the participants should have further opportunity to address an aspect of the rate structure, namely, the "uncapped" TCC metric. Decision at 4, 32-39. While acknowledging the Board's clear authority "to modify proposals set forth by the parties, or to suggest models of [its] own," the D.C. Circuit found that the Services needed "a heads up"

regarding its decision to adopt Google's proposed "uncapped" TCC but with a rate percentage increase. *Id.* at 35. Thus, the Board may retain the "uncapped" TCC in its rate structure, but must "reopen the evidentiary record" so that the Services can argue the purported disruptiveness or impropriety of that prong. *Id*. at 38.[5]

Second, the Board was directed on remand to more clearly articulate its reasons for rejecting the Phonorecords II settlement as a proposed benchmark for rate percentages. *See id*. at 39, 44-46 (directing the Board to provide a "reasoned analysis" that aids in "discern[ing] the basis on which the Board rejected the Phonorecords II rates as a benchmark").[6] The Decision noted that the Board found the Services' evidence deficient, *id*. at 45, and had determined that the Phonorecords II mechanical license royalties were too low, *id*. at 41. The Decision also affirmed the Board's analysis of the needed increase in rate levels under Shapley, *id*. at 39-43, finding simply that the Board had not "adequately explain[ed]" why it rejected that proposed benchmark, *id.* at 46.

Third, with respect to Board's revision of the definition of "Service Revenue," the Decision again simply found that the Board had not adequately explained its procedural basis for revising the term following the initial determination, remanding with the instruction to provide a "fuller explanation" or to take new agency action to put the revised definition in place. *Id*. at 50, 56. The services have never argued that the revised definition is substantively wrong (since it is plainly the more reasonable definition), but merely attempted to block the definition on procedural grounds.

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[5] Needless to say, three years of the uncapped TCC rates, during which there has been unparalleled growth and success in the streaming service industry and plainly no disruption, makes this opportunity to prove disruption likely a hollow exercise.

[6] The extensive existing record (and the approval of the Board's finding that increases in the rates were appropriate) provides evidence to underlie the further articulation of the reasons for the Board's rejection of the Phonorecords II settlement as a benchmark.

Since the Decision ends this procedural objection by providing for the taking of new agency action in addition to the provision of a fuller explanation, this aspect of the remand amounts to a formality given the obvious substantive merit to the definition in the Final Determination.

The D.C. Circuit rejected all other challenges to the Final Determination raised during the appeal. Among the challenges that the circuit court rejected was the appellant Services' contention that the Board's Shapley analysis, by which the Board had determined the amount of the rate increase, was arbitrary or capricious, finding instead that the Board's analysis represented the "type of weighing of evidence and decision to proceed cautiously [that] is well within the Board's discretion." *Id*. at 39-43. The circuit court similarly upheld the Board's decision to rely on portions of Dr. Gans' analysis while rejecting other aspects of his testimony, holding that the Board's "line-drawing and reasoned weighing of the evidence falls squarely within the Board's wheelhouse as an expert administrative agency." *Id*. at 43. In approving the Board's analysis supporting the rate increase, the circuit court further observed that both the Copyright Owners' and the Services' experts *agreed* that musical works royalty payments should be closer to those for sound recordings, and noted the Board had concluded "that the Phonorecords II mechanical license royalties were too low." *Id*. at 41.[7] The circuit court further rejected the appellant Services' argument that the Board had given inadequate treatment to the Subpart A settlement as a purported benchmark. *Id.* at 44-45. Finally, the circuit court upheld the Board's conclusion under the first former 801(b) factor, namely, that rates must increase in order to maximize the availability of creative works. Decision at 46-49.

Given such findings regarding the need for a rate increase for the 2018 through 2022 period, it is undoubtedly "a more equitable interim arrangement" to ensure that such increased rates are

[7] A finding that itself reflects why the Phono II settlement was not a suitable benchmark

maintained during the pendency of the remand proceeding, as opposed to allowing, for example, "the old rates [to be] in effect even where there is no question that they should be higher." *Kansas Cities v. FERC*, 723 F.2d 82, 93-94 (D.C. Cir. 1983) (Scalia, J.) (affirming FERC decision to permit new rates to go into effect on an interim basis pending further consideration of said rates where failing to impose interim rates would have resulted in "unjust enrichment" and the "delay [of] a concededly necessary rate increase"); *see also Tennessee Gas Transmission Co.*, 371 U.S. at 154-55 (approving interim rate order that, had it not been in effect, would have permitted gas company to collect a rate deemed too high "for an additional 18 months at a cost of over $16,500,000 to consumers").

Royalties for nearly three years have been paid under the current rates. Those rates have not caused disruption to the Services, despite the conclusory claims in arguments opposing the uncapped TCC metric. Indeed, Spotify, one of the two "pureplay" Service participants, announced an accounting profit for the very first time under the current rates.[8] Maintaining the Interim Rates pending the Remand Determination is the prudent and reasonable path, supported by the Act, a wealth of legal precedent and the substantial evidence underlying the Final Determination.

[8] *See e.g.*, Tim Ingham, *Spotify Is Profitable. How Did That Happen?*, ROLLING STONE, Nov. 12, 2019, https://www.rollingstone.com/music/music-features/spotify-profitable-how-happen-910456/.

CONCLUSION

For the foregoing reasons, the Copyright Owners respectfully request that the Judges adopt the Proposed Order and implement the Interim Rates pending the Remand Determination.

Dated: November 2, 2020

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Proof of Delivery

I hereby certify that on Monday, November 02, 2020, I provided a true and correct copy of the Motion of Copyright Owners for Interim Rates and Terms to the following:

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Signed: /s/ Benjamin K Semel